IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9794 & 10264 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

DAHYABHAI LALUBHAI PARMAR

Appearance:

MR HARDIK C RAWAL for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 06/04/2000

ORAL JUDGEMENT

By filing the petition being special civil application No. 9794 of 1999, the petitioner corporation [hereinafter referred to as "the Corporation] has challenged the order passed by the Industrial Tribunal,

Baroda in Approval Application No. 104 of 1996 in Reference IT No. 187 of 1994 dated 12th January, 1999 whereby, the tribunal has rejected the approval application. By filing the special civil application No. 10264 of 1999, the petitioner-workman [hereinafter referred to as "the workman"] has prayed for a direction to the corporation to implement the orders passed by the tribunal in the aforesaid application on 12th January, 1999 by reinstating the workman in service with full back wages for intervening period. Therefore, since both the petitions are arising from the order passed by the tribunal in aforesaid Reference and since the subject matter of both the petitions is one and the same, both the petitions are heard together and are disposed of by this common judgment.

Rule in both the petitions. Learned advocate Mr. J.S.Brahmbhatt appearing for the respondent workman in special civil application No. 9794 of 1999 has waived service of rule. Learned advocate Mr. H.C.Raval appearing for the respondent corporation in special civil application no. 10264 of 1999 has waived service of rule on behalf of the said respondent. On the facts and in the circumstances of case and with the consent of the parties, both the petitions have been taken up for final hearing today.

The facts of the present case, in brief, are that the workman concerned namely D.L.Parmar, driver was working at Pani Gate Depot and was transferred at Karjan Depot. The charge against the workman concerned was to the effect that on 8th March, 1995, the workman Shri Parmar has misbehaved with the junior assistant Shri Vyas in the office of the Depot Manager in the drunken condition with loud voice and tried to assault upon Shri Vyas. On the basis of the said allegation, Chargesheet No. 120 of 1995 was served upon the workman concerned and thereafter, departmental inquiry was initiated by the Corporation against the workman. Ultimately, the inquiry officer found that the workman was guilty of the charge levelled against him and, therefore, dismissal order was passed against the workman on 21.8.1996. At that time, reference IT No. 187 of 1994 was pending before the Industrial Tribunal, Baroda and, therefore, the corporation had filed the approval application under section 33(2)(b) of the ID Act being approval application no. 104 of 1997. The Tribunal, after considering the evidence led before it and also after considering the papers of inquiry, came to the conclusion that the inquiry initiated against the workman was contrary to the principles of natural justice. The tribunal also

concluded that the findings recorded by the inquiry officer against the workman concerned were vitiated and there was no evidence in the inquiry against the respondent workman and, therefore, relying on the decision of the apex court in the case of Lalaram versus DCM, reported in AIR 1978 SC 1004, the tribunal came to the conclusion that the departmental inquiry is vitiated, the findings are also vitiated and it is a case of victimization and, therefore, the tribunal has rejected the approval application which order is under challenge in the petition filed by the corporation being special civil application no. 9794 of 1999.

During the course of hearing, both the learned advocates have made a request before this Court to examine the question of penalty of dismissal as if this Court is exercising the powers under section 11A of the Industrial Disputes Act, 1947 relying upon the decision of the apex court in the case of Workmen of Bharaht Freeze Werner (P) Ltd. reported in JT 1990 (1) SC 305 and also relying upon the recent decision of the apex court in case of Senapathy Whitley Ltd. versus Karadi Gowda and Anr. reported in 2000 LLR 364. Both the learned advocates have jointly prayed before this Court that in view of the observations made by the tribunal that the departmental inquiry has been vitiated and the findings have also been vitiated and it is a case of victimization, then, this Court may also consider the case of the workman as a court exercising the powers under Sec. 11A of the ID Act. In the case of workmen of Bharat Freeze Ltd. (supra), the apex court has held that the aforesaid directions have been given by the High Court while exercising the powers which are exercised by the labour Court or tribunal in view of the joint memo submitted by both the learned advocates for the parties whereby it was requested that the court may decide the entire matter without remitting it to the tribunal and grant appropriate relief in accordance with law. Moreover, in view of the provisions contained in section 11A of the ID Act, the tribunal is empowered to go into the question whether the punishment of discharge or dismissal passed against the workman is justified or not and as per the said provisions of sec. 11A of the ID Act, the tribunal is empowered to set aside the order of discharge or dismissal as the circumstances of the case may require. It was open to the high court to consider as to what would be the adequate punishment for the misconduct found to have been committed by this workman and to take view that the misconduct established against this workman was not such which would warrant either dismissal or discharge and denial of half of the back

wages for the period of about six years was adequate punishment for the misconduct found to have been committed by the workman. Recently, the apex court has considered the very same question and held that in such cases, the court can modify the punishment and impose the modified punishment on the workman for doing justice between the parties. It is also observed by the apex court that it is well settled that the powers of the labour court under sec. 11A are wide and it would be open to the high court, in justifiable cases, to modify the orders of the labour court. It has also be observed by the apex court that it is also open for this court under Article 136 of the Constitution of India to alter the punishment against the workman for doing justice between the parties.

In the present case, the defence of the respondent workman is that, in fact, he went to the junior assistant of the depot in respect of PF Loan but the other fact is not true that the respondent indirectly abused the depot manager or any other person. It is also his case that when he went to the depot office to take his monthly salary, the amount of of his salary was snached away by one person of the depot from whom the he had obtained loan of Rs. 3000.00 on interest and, therefore, the workman went to the depot manager but he was not in the office and, therefore, the workman approached the junior assistant of the depot manager to collect the form to obtain the PF Loan but the same was not given by the junior assistant and he was pushed out of the office and was insulted and, therefore, when the depot manager came to the depot office in afternoon, the workman had approached him and narrated the whole facts and orally complained against the aforesaid officer who has snached away the amount of his salary but his complaint was not heard by the depot manager and on the contrary, false report was made against him and on the basis of the said report, he was served with the chargesheet and after completion of the departmental inquiry, he was dismissed from service on 21.8.1996. I have taken into consideration the gravity of misconduct established against the workman and also taken into consideration the length of service put in by the respondent workman and have also considered the decision of the Division Bench of this Court in case of union of India and Kamlesh G.Shah reported in 1998 (1) LLJ 760, wherein the charge against the educated bank employee was that of use of filthy language against the officers and co employee which has ultimately resulted into dismissal of the employee. In the said decision, the division bench has considered various decisionsof the apex court

in case of Ved Prakash, in case of Ramakant and other similar cases and it has been held that in such misconduct,the punishment of dismissal is quite disproportionate and denial of partof the back wages was considered to be sufficient punishment and therefore, the division bench of this court has granted reinstatement with 50% of the back wages for the intervening period.

Recently, the apex court has, in case of UP State Road Transport Corporation and others versus Mahesh Kumnar Mishra and others reported in 2000 AIR SCW 931,held that the high court can interfere if the penalty shocks conscience of the Court. It has been held as under in para 8 and 9 of the judgment:

"8. This will show that not only this court but also the high court can interfere with the punishment inflicted upon the delinquent employee if, that penalty, shocks the conscience of the Court. The law, therefore, is not as contended by the learned counsel for the appellants, that the high court can, in no circumstances, interfere with the quantumof punishment imposed upon a delinquent employee after disciplinary proceedings.

9. Another Three Judge Bench of this Court in colour Chem Ltd. v. AL Alaspurkar (1998) 3 SCC 192 :1998 AIR SCW 709: AIR 1998 SC 948 : 1998 Lab IC 974), has also laid down the same proposition and held that if the punishment imposed is shockingly disproportionate to the charges held proved against the employee, it will be open to the Court to interfere. "

In the instant case, past record of the workman has not been produced by the corporation. Therefore, in absence of his past record, this court has to raise an inference in favour of the workman that his past record is not bad. Therefore, on the facts and in the circumstances of the case and also in view of the length of service of the respondent workman, I am of the opinion that it would be just and proper if the corporation is directed to reinstate the workman in service with continuity of service while denying and/or withholding the back wages for the period from the date of dismissal 21st August, 1996 till the date of decision of the industrial tribunal 12th January, 1999. I am of the opinion that the denial of back wages for the aforesaid period would be sufficient punishment in view of the

misconduct established against the respondent workman. Therefore, keeping in view the socio economical back g round of the workman, family back ground of the workman, length of service and compelling circumstances and the past record of the workman, I am of the opinion that the punishment of dismissal should be set aside and the workman should be directed to be reinstated in service with continuity of service and without back wages for the aforesaid period from 21.8.1996 to 12.1.1999. Accordingly, the corporation is directed to reinstate the workman in service with continuity of service and without back wages for the period from 21.8.1996 to 12.1.1999. The corporation shall reinsntate the workman in service as expeditiously as possible, preferably within four weeks from the date of receipt of this order. The corporation is further directed to pay full wages to the workan from 12.1.1999 till the date of his actual reinstatement in service within period of six weeks. Rule is made absolute subject to the aforesaid directions in both the petitions. There shall be no order as to costs.

6.4.2000. (H.K.Rathod,J.)

Vyas